

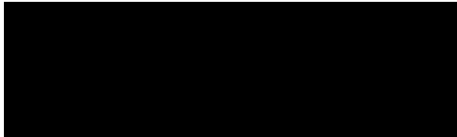
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U.S. Citizenship
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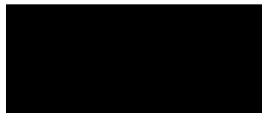
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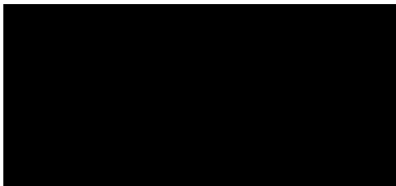
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

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Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a clinical biostatistician. At the time he filed the petition, the petitioner was a research associate at the New York Academy of Medicine (NYAM). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Throughout this proceeding, counsel contends that the petitioner qualifies not only for a waiver, but also for classification as an alien of extraordinary ability in the sciences pursuant to section 203(b)(1)(A) of the Act, and implementing regulations at 8 C.F.R. § 204.5(h). That classification is entirely separate from the classification sought in this proceeding. If the petitioner desires consideration under a second classification, he must file a second petition, making it clear what classification is sought. The director is not obliged to decide, upon review of the record, which classification would be most appropriate. Rather, the petitioner must choose the classification sought and then establish eligibility under that classification. In this decision, we shall concern ourselves exclusively with classification as a member of the professions holding an advanced degree, under section 203(b)(2) of the Act, and the pertinent regulations at 8 C.F.R. § 204.5(k).

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

We note that 8 C.F.R. § 204.5(k)(4)(ii) states that, to apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not note this omission in the denial notice or in the prior request for evidence. We will, therefore, review the matter on the merits.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states:

[The petitioner] has an uncommon breadth of expertise . . . as a highly specialized clinical biostatistician, programmer and database administrator dedicated to the field of HIV/AIDS research. [The petitioner's] reputation in this sophisticated field is as [a] leading researcher,

and he easily ranks among those at the forefront of this . . . discipline. He holds much promise in the advancement of preventive and solution-oriented research on HIV/AIDS. . . .

[The petitioner] has made many original contributions to the field of scientific research. These contributions have resulted in numerous innovative methods related to successful results in statistics, biostatistics, computer science, botany, ecology and HIV/AIDS research affecting underserved populations in a regional, national and global context. . . .

[The petitioner] has successfully completed national and international experiments of serious and significant scientific and social impact. He has created detailed research analysis and developed numerous software programs that have not only enhanced but helped in the research methods and projects of others in his professional field. His expertise in experimental design and data analysis has been noted both nationally and internationally by the professional research community. He has had numerous articles published about his groundbreaking methods and research, and has authored a number of articles in scientific journals that are referenced regularly.

Several witness letters accompany the petition. We shall discuss some examples here. Some of the witnesses worked with the petitioner years ago, in China, when the petitioner was studying forestry. Given that the petitioner no longer works in forestry, and counsel's arguments regarding the petitioner's eligibility for the waiver focus on biostatistics and HIV/AIDS research rather than forestry, we shall focus on the witnesses who discuss the petitioner's more recent work. Expertise in a now-abandoned field is not a strong factor in favor of granting the waiver.

Dr. [REDACTED], director of the Office of Special Populations (OSP) at NYAM, states:

[The petitioner] joined the Office as a Research Associate in February 2002. He has been actively involved in two major projects. The first project is the Center for Adherence Support Evaluation (CASE) study. This study evaluates intervention programs in the state, which are engaged in promoting and supporting adherence to HIV/AIDS treatment. The second one is the Minority AIDS Initiative (MAI). The MAI project is an outcome evaluation study of programs that provide care links for people of color with HIV who have been unconnected to care. Agencies funded by the MAI also improve care access for those who have had only sporadic connections to care.

I have had many opportunities to review his scientific materials. [The petitioner] has been playing an important role in the research group. His research work includes statistical analysis on the longitudinal data of clients living with HIV/AIDS, intensive data manipulation using SAS language, and data quality control.

[The petitioner] possesses strong statistical analysis skills. He is good at applying various statistical methods to analyze the clinical data. In addition to his innovative statistical techniques, [the petitioner] has demonstrated his significant computing skills. He is

proficient in data manipulation using different computing languages. Data cleaning is critical, and it has been a time consuming and labor intensive process. [The petitioner] has developed a series of powerful and efficient software packages to accomplish this goal. He is creative in developing programs for data manipulation to generate diverse output datasets for statistical analysis. His achievements in statistical computing save a lot of time and energy for the research group, and make the research work advance smoothly.

Dr. [REDACTED] a senior research associate at NYAM/OSP, states:

In my professional opinion, [the petitioner's] outstanding command of health services research statistics and database management places him at the top of his discipline today. In light of his prior research experience with ecosystems and DNA analysis, [the petitioner] was recruited into a rather intensive role at the New York Academy of Medicine. [The petitioner] has made important contributions as a biostatistician and holds much promise in the advancement of research on HIV/AIDS.

[The petitioner's] expertise has been objectively demonstrated in a number of areas. Currently [the petitioner] plays a leading role as a biostatistician in the Minority AIDS Initiative project funded by the Congressional Black Caucus Initiative. His primary focus in the project is in the development and evaluation of an intervention that addresses barriers to improved quality of life and maintenance in regular health care for people living with HIV. [The petitioner] has provided the Academy with many profound insights into this subject. His impact in this area lies in his natural ability to apply statistical techniques to various complex health-related data. . . .

He has developed a series of software programs that generate a number of vital reports that make it possible for us to evaluate current health care programs in a timely manner – a rare but most imperative skill when it comes to HIV/AIDS research. [The petitioner's] efficiency in his field also allows us to provide important nuts-and-bolts information that is vital to policy makers.

Two of the petitioner's former instructors at Louisiana State University (LSU) focus on the petitioner's computer skills. Dr. [REDACTED] an associate professor who taught a course on database management systems attended by the petitioner, states that the petitioner "mastered the database system I taught from with great skill and ease" and that the petitioner's "thesis project excelled in all its user-friendly logistics."

Professor [REDACTED] states:

I first became acquainted with [the petitioner] when he was a graduate assistant in my ecology lab in the spring of 1999. Acting as a database manager at LSU, [the petitioner's] work in the Biological Sciences department centered around his careful manipulation of biological data that resulted in an accurate and ecologically-observant database management system. [The petitioner] not only developed geographical mapping software to generate

concise data reports, he also provided LSU faculty and students alike with statistical programming for research projects using an SAS language that employed imaginative and pertinent graphics. These user-friendly maps [the petitioner] created not only indicated each plot with a number and its geographically-correct coordinate, but also the relative distance among the trees in each plot to the campus in a rather ingenious manner.

Dr. [REDACTED], principal associate of neuroscience at the Albert Einstein College of Medicine, Yeshiva University, states:

In my experiences across many laboratories, I can say that [the petitioner's] work is of the highest caliber and of great importance to research in chronic disease, especially in HIV/AIDS. [The petitioner] possesses a rare ability to address biological hypotheses at the theoretical, as well as the applied levels.

I am familiar with [the petitioner's] work at the New York Academy of Medicine. . . . On more than one occasion, I have had the opportunity to review [the petitioner's] work. His work displays uncommon skill, accuracy, and care. These qualities are critical for working in collaborative projects and laboratories because so many people depend on [the petitioner's] programs now and for the future. My conclusion is that his outstanding reputation among his colleagues as an analyst and programmer are well earned.

Materials in the record show that Dr. [REDACTED] has collaborated with the petitioner's co-worker Dr. [REDACTED].

The witnesses whom the petitioner has selected clearly believe the petitioner to be skilled and accomplished in his field, but the above letters do not support counsel's claim that the petitioner's work "has been noted both nationally and internationally by the professional research community." The letters do not indicate that the petitioner is engaged in any actual HIV/AIDS research or in formulating prevention strategies; rather, his role seems to be more akin to technical support, optimizing the means by which other researchers interpret data that they have collected.

The petitioner submits copies of his published scholarly work. All of these articles relate to the petitioner's former career in forestry; example titles are "Study on nutrition management in Chinese fir cultivation" and "Symbiotic nitrogen-fixing and uptake hydrogenase activity in *Acacia confusa*." The petitioner does not claim to have published anything since 1996. Counsel's claim that the petitioner is "destined" to publish more material in the future has no evidentiary weight whatsoever. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moving from published articles *by* the petitioner to articles *about* the petitioner, we have already quoted counsel's claim that "numerous articles [have been] published about [the petitioner's] groundbreaking methods and research." Elsewhere in the introductory brief, counsel elaborates upon this claim:

As an internationally-known expert in biostatistics, computer programming, research analysis and database administration, [the petitioner's] work has been professionally showcased through various articles written about his innovative research processes. This surely has been evidenced and confirmed by the number of other scientists in different research fields using [the petitioner's] ground-breaking techniques, as many of [the petitioner's] techniques for data analysis are now becoming standard in numerous other fields of scientific research.

The petitioner has not submitted copies of the "numerous articles." Rather, counsel lists "a comprehensive sampling of the articles published about [the petitioner's] work in and beyond his field." Five of the publications are concerned with forestry; four of these five are the petitioner's own articles from the early 1990s. The remaining title, *Chinese Fir Silviculture*, appears to be a book rather than an article. This publication is not in the record, and therefore we cannot evaluate its content, but it seems safe to say that *Chinese Fir Silviculture* does not consist of a discussion of the petitioner's contribution to biostatistical methods as applied to HIV/AIDS research.

Counsel lists six articles and papers as "[s]elected published materials of CASE," all co-authored or co-edited by Dr. [REDACTED]. While Dr. [REDACTED] has said that the petitioner is involved in the CASE project, it does not necessarily follow that every article about CASE is also about the petitioner's methods. Certainly, the petitioner is not a credited co-author of any of these articles, which supports the conclusion that the petitioner's involvement relates to computer support rather than active participation in research.

Counsel lists three pieces about the MAI project. Dr. [REDACTED] is a credited co-author of two articles; the third piece is a conference presentation with no credited authors. Again, the articles themselves are not in the record.

Counsel also names two web sites: <http://www.case.nyam.org> and <http://hab.hrsa.gov/special/mai.htm>, about the CASE and MAI projects, respectively. The CASE web site does not indicate that CASE itself is involved in HIV/AIDS research at all. Rather, it states:

The CASE mission is to increase understanding of how best to support HIV treatment adherence by:

1. Providing grantees with evaluation technical assistance
2. Leading a national cross-site evaluation of adherence support
3. Disseminating "best practices," findings, and replicable models to HIV/AIDS service providers, policymakers, and funders.

The web site also indicates that the site was "Last updated: 4/11/2002," which was only a few weeks after the petitioner began working at the New York Academy of Medicine. The "CASE Staff Roster," which is available at <http://www.case.nyam.org/roster.html>, does not even include the petitioner's name. Counsel's assertion that this web site is "about [the petitioner's] innovative research processes" is simply untenable.

The MAI site identified by counsel is a single web page on the site of the Health Resources and Services Administration of the Department of Health and Human Services. That page describes MAI's purpose:

MAI funds target programs to enhance effective HIV/AIDS efforts that directly benefit racial and ethnic minority communities in three broad funding categories: technical assistance and infrastructure support, increasing access to prevention and care, and building stronger community linkages to address the HIV prevention and health care needs of specific populations.

There is no mention of “innovative research processes” by the petitioner or by anyone else. Counsel has not specified what portions of the MAI page, or what pages of the CASE site, supposedly focus on the petitioner’s methods, and neither CIS in general nor the AAO in particular is obliged to study the sites meticulously in order to verify or refute counsel’s claims. The burden is on the petitioner to show that the sites tout his methods, not on CIS or the AAO to prove otherwise. Simply identifying web sites does not meet this burden.

The aforementioned articles and web sites are not simply “about” CASE and MAI; they were created by researchers working in those projects. Thus, even if the petitioner had shown that the articles and sites focused on his contributions (which he has not done), the publications would not document the international attention that counsel has claimed, nor would they document that the petitioner’s methods have been adopted outside of those two projects. In short, the initial submission is entirely devoid of evidence that the petitioner’s biostatistical work has attracted any attention beyond the researchers who are working on the aforementioned projects.

On April 11, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit further documentation to meet the criteria set forth in *Matter of New York State Dept. of Transportation*. The director noted that the petitioner published articles “while a student in China, relating to Agriculture and Forestry. The record appears to be devoid of published material, authored by the beneficiary, that relate[s] to his current involvement with HIV/AIDS research. Please submit evidence of same if available.” The director also called for evidence to show that the petitioner’s “participation in this field has yielded any significant advances, directly attributed to him as an individual, that have been nationally acknowledged and widely implemented.”

In response, counsel states:

Although the fields [of forestry and HIV/AIDS research] are different, [the petitioner’s] skills as applied to each field are the same. . . . It is not significant whether he works as a biostatistician in the subject of forestry, HIV/AIDS, or cancer or any other field. What is of importance is the mathematical and analytical skills, as well as the scientific knowledge utilized to carry [out] biostatistical study.

Counsel seems to indicate that the petitioner’s forestry work was primarily as a biostatistician. There is, however, reason to conclude that this is not the case. The petitioner did not earn any degrees in statistics until several years after he ceased to publish works on forestry. Witnesses discussing the petitioner’s forestry work mention that such work involved computers and statistics, but the petitioner also “studied epidemiology, entomology, microbiology, mycology, plant pathology, and fire prevention in forest ecosystems.” Another significant distinction, already noted above, is that the petitioner’s involvement in forestry research was significant and direct enough for him to be credited as an author on several published articles; he has received no comparable credit for his later work. The petitioner’s role in HIV/AIDS research appears, for a number of reasons, to be much more limited than his earlier forestry research.

Counsel's assertion that "[i]t is not significant whether [the petitioner] works as a biostatistician in the subject of forestry, HIV/AIDS, or cancer or any other field" raises the question of why the initial submission had such a strong emphasis on HIV/AIDS research. Counsel's argument supports the conclusion that the petitioner's biostatistical work amounts to a kind of technical support, rather than HIV/AIDS research in its own right. Furthermore, because the focus of the petitioner's work is on methodologies rather than on the specific issue being studied, the petitioner could conceivably move to an entirely different area of research and thereby stop affecting HIV/AIDS research altogether.

With respect to the above, counsel asserts that the petitioner has, indeed, changed jobs since he first filed the petition. Counsel states that the petitioner's "research work at the Albert Einstein College of Medicine is currently focused on two projects, the Women Interagency HIV Study (WIHS), and Human Leukocyte Antigen (HLA)."

Counsel repeats the claim that the petitioner's "work has been exhibited and showcased." Specifically, HIV/AIDS researchers have put together articles and conference presentations, and in assembling their data, they relied on the petitioner's statistical methods and computer programs. The focus of the publications and presentations was the researcher's findings, not the statistical methods they used to interpret their data. This in no way shows that it is in the national interest to ensure that this the petitioner, rather than some other qualified statistician, works on future projects with these researchers. Given counsel's assertion that the petitioner has left the NYAM, the petitioner's involvement with those researchers appears already to have ended. We do not dispute that researchers sometimes require statistical tools in compiling and interpreting their results, but it does not follow that a statistician merits a waiver simply by doing his or her job, *i.e.*, providing those tools.

The petitioner submits several articles (some published, some manuscripts) by researchers in the WIHS project. In listing these articles, counsel states: "The following papers are articles published by the head of [the petitioner's] Department of Epidemiology and Population Health, Dr. [REDACTED], which have utilized [the petitioner's] biostatistics to analyze the research data." As worded by counsel, this assertion implies that the petitioner's methods were utilized in the writing of the articles.

The petitioner did not begin working at [REDACTED] until after the petitioner filed the present petition on September 10, 2004. The initial filing contains no mention of WIHS. All of the WIHS articles submitted in response to the RFE were published, presented, or submitted for publication before December 2004. Therefore, the articles were prepared before the petitioner joined the WIHS project. It is, of course, conceivable that the petitioner had developed some statistical model that WIHS adopted in the course of preparing the articles; but no one from the WIHS project says that this is what happened and we are not required to presume this to be the case. We are left only with counsel's claim that the petitioner participated in or contributed to the preparation of articles that, in fact, pre-date the petitioner's involvement with WIHS.

The petitioner submits two new letters. Dr. [REDACTED], manager of clinical biostatistics at [REDACTED] Research & Development, credits the petitioner with "certain contributions" such as "innovative statistical methods" and "useful programs." Dr. [REDACTED] states that the petitioner "is a well-acknowledged outstanding researcher in the field of biostatistical research" whose "scholarly contributions . . . are of significance," but

Dr. [REDACTED] does not identify those contributions. Dr. [REDACTED] identifies the petitioner's skills, such as "his proficiency in computing languages," but skills are not contributions.

Dr. [REDACTED] of the Division of Biostatistics at New York States Psychiatric Institute describes the petitioner's current work and praises the petitioner's "significant contributions to the HIV/AIDS and HPV study," but like Dr. [REDACTED], Dr. [REDACTED] does not indicate what those contributions are except to say that they lie in the area of data analysis and statistical modeling.

The director denied the petition on July 29, 2005, stating that the petitioner has failed to establish that he "has influenced the field to a substantially greater degree than have other biostatisticians, computer scientists, and database administrators."

On appeal, counsel asserts that the petitioner "is one of the world's leading clinical biostatisticians," and that the petitioner's "contributions are generally acknowledged as representing major significant advances in his vital field that are beyond the capabilities of the majority of colleagues." The record does not support these assertions, or show that anyone other than counsel shares these views.

Counsel indicates that the petitioner has changed jobs yet again, and now "works for an international pharmaceutical company, [REDACTED] as a biostatistician in the field of oncology – cancer treatment and research." Counsel states that the director mischaracterized the petitioner as an HIV/AIDS researcher. In this vein, we note counsel's original brief, submitted with the initial filing of the petition. The first page of the brief began with this heading:

Petition for National Interest Waiver

Field: HIV/AIDS research (specialty in sophisticated analysis of scientific research data)

Counsel also indicated that the petitioner is "a highly specialized clinical biostatistician, programmer and database administrator dedicated to the field of HIV/AIDS research," who "holds much promise in the advancement of preventive and solution-oriented research on HIV/AIDS." Counsel began a section of this brief with the heading "Leading United States AIDS Research Projects Require [the petitioner's] Unique Expertise," and near the end of the brief, counsel asserted that "the HIV/AIDS pandemic . . . poses a major threat to global stability." The initial submission also contained substantial background information about HIV/AIDS. Only after the petitioner changed employers did counsel begin to downplay, rather than emphasize, the petitioner's work relating to HIV/AIDS research. Now the petitioner has changed employers again, and has apparently ceased working with HIV/AIDS research. Given that HIV/AIDS research was originally presented not merely as an example of the petitioner's work, but as a cornerstone of the petitioner's waiver claim, the repeated changes in employment are not simply a trivial matter.

In the denial notice, the director had stated that the petitioner's RFE "response included no evidence that the beneficiary had been publicly recognized in the media for his contributions to his field." Counsel correctly observes that "there is no such requirement in the regulations or relevant [AAO] decisions," and therefore the director relied upon "an improper ground for denial." Counsel also asserts that "the field of biostatistics is not a field that attracts media attention."

The director does not appear to have used media coverage as a basic requirement for eligibility. Rather, the director's observation speaks to the credibility of counsel's inflated claims. Specifically, counsel had originally claimed that the petitioner "has had numerous articles published about his groundbreaking methods and research." Because the petitioner's initial submission did not include any of these "numerous articles," the director, in the RFE, had stated: "There is a noted absence of news articles" about the petitioner and his work. In this context, the director was quite justified in observing, in the denial notice, that the petitioner has never documented the media coverage that counsel had, previously, so emphatically claimed. Only after two failed opportunities to back up the claim regarding "numerous articles" about the beneficiary has counsel retreated to the position that "the field of biostatistics is not a field that attracts media attention." This last assertion is very likely true, but it is also entirely incompatible with counsel's earlier claims.

Counsel asserts that the director did not give sufficient consideration to two independent witness letters, submitted in response to the RFE. We have already discussed those letters, above, and need not repeat or expand upon that analysis here.

Throughout this proceeding, counsel has made grandiose claims such as the assertion that the petitioner "is one of the world's leading clinical biostatisticians" whose "work has achieved enormous critical acclaim," but the evidence submitted simply does not support such extravagant claims. The record contains no objective documentation to show that the petitioner's work has attracted substantially more attention than that of countless other competent and qualified biostatisticians. Neither the director nor the AAO disputes that the petitioner qualifies for classification as a member of the professions holding an advanced degree. Nevertheless, an alien within that classification must still normally receive an approved labor certification and otherwise fulfill the statutory job offer requirement. By seeking a waiver, the petitioner has requested an additional benefit over and above the underlying classification. The petitioner cannot qualify for this additional benefit by relying on counsel's exaggerated assertions that have little relation to the evidence those assertions purport to describe.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.